



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/169278

PRELIMINARY RECITALS

Pursuant to a petition filed October 8, 2015, under Wis. Stat., §49.45(5), to review a decision by Milwaukee Enrollment Services to recover Medical Assistance (MA), a hearing was held on October 28, 2015, by telephone.

The issue for determination is whether the agency correctly determined an MA overpayment.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]

Milwaukee, WI 53210-1755

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Milwaukee Enrollment Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner became eligible for BadgerCare Plus (BC+) MA on April 1, 2014. A notice dated April 2, 2014 informed petitioner of the eligibility and that he should report to the agency if his monthly income went above \$972.50.
3. Petitioner's MA closed effective June 1, 2015, after he did not complete a renewal. Although petitioner did not use his medical card, MA paid monthly HMO capitation fees on his behalf beginning in October, 2014.

4. Petitioner began to work in July, 2014. His income went above \$972.50 in August, 2014, and it remained above that level in every month through May, 2015.
5. By a notice dated September 28, 2015, the agency informed petitioner that he was overpaid \$2,413.83 in MA from October 1, 2014 through May 31, 2015, claim no. [REDACTED]

DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the department's BC+ Handbook, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

Prior to April 1, 2014, the state had an MA program for childless adults called the BC+ Core program with an income limit of 200% of the Federal Poverty Level (FPL). The program was limited to only a small number of potentially eligible participants due to enrollment limits. State law changed effective April 1, 2014. As of that date all childless adults were eligible for BC+ but with the income limit reduced to 100% of the FPL, which, for a one-person household, is \$972.50. See Wis. Stat., §49.471(4)(a)4.b for the new law, and the MA Handbook, Appendix 50.1 for the limit. When petitioner's income increased above the limit, he became ineligible for MA, but the program continued to pay capitation fees because petitioner did not report the increased income.

An overpayment is determined as follows: "If the case was ineligible for BC+, recover the amount of medical claims paid by the state and/or the capitation rate. Use the ForwardHealth interChange data from the Total Benefits Paid by Medicaid Report(s). Deduct any amount paid in premiums (for each month in which an overpayment occurred) from the overpayment amount." Handbook, App. 28.4.2.

Petitioner testified that he did not report the income because he thought his MA closed as of November, 2014. I checked the computer notice history; no notices were issued between April, 2014 and April, 2015. It is unclear why petitioner thought his MA would end. The overpayment statute does not require an overpayment to be caused by an intentional action, only that it be caused by a failure of the person to report a change. Even if petitioner did not intend to take advantage of the program, he nevertheless received MA benefits to which he was not entitled due to failing to report his income. I must conclude that the overpayment was determined correctly.

CONCLUSIONS OF LAW

The agency correctly determined that petitioner was overpaid \$2413.83 in MA because he failed to report income that would have ended his MA eligibility.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 2nd day of November, 2015

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 2, 2015.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability